

IN THE MATTER OF	:	BEFORE THE
DUDLEY OBRECHT, T/A	:	HOWARD COUNTY
AMBERTON OBRECHT	:	BOARD OF APPEALS
PROPERTIES	:	
Petitioner	:	HEARING EXAMINER
	:	BA Case No. 07-042V

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DECISION AND ORDER

On March 3, 2008, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Dudley Obrecht, t/a Amberton Obrecht Properties, LLC, for a variance to reduce the 30-foot parking use setback from a public street right-of-way to 10 feet for 18 parking spaces in an M-2 (Manufacturing: Heavy) Zoning District, filed pursuant to Section 123.D.2.a of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

Sang Oh, Esquire, represented the property owner. Dudley Obrecht testified in support of the petition. No one appeared in opposition to the petition.

FINDINGS OF FACT

Based upon the evidence presented at the hearing, I find as follows:

1. The subject property is situated on the south side of Amberton Drive about 1,300 feet southeast of US 1 and is also known as 6630 Amberton Drive (the "Property"). The Property is located in the 1st Election District and is identified on Tax Map 37, Grid 24, as Parcel 608, Lot D-2.

2. The 5.88-acre Property is an irregularly shaped, pipestem lot and is part of a large multi-building industrial park. It is accessed by a 400-foot private driveway south of Amberton Drive. The driveway leads to a paved parking lot and a one-story, 90,000± square-foot, one-story warehouse. The warehouse bays are located along a portion of the south wall. Between this wall and the southern property line are the truck/loading circulation area and additional parking spaces. An elongated landscaped/green space and a stormwater management facility in the Property southern corner separate these parking spaces from the southern property line.

3. The southwestern section of the Property is sharply inclined where it adjoins Parcel E. A long retaining wall running north to south supports the grade change.

4. Vicinal Properties. All adjoining properties are also zoned M-2. To the west is Parcel 588, which sits at a higher elevation than the Property and is improved with an asymmetrically shaped warehouse/office with two entrances. Parcel D-1 to the Property's north is improved with a small office/warehouse. To the east, Parcels 580 and 581 are each improved with larger warehouses. To the south is the wide MD 100 right-of-way.

5. Roads. Amberton Drive has two travel lanes and about 44 feet of paving within a variable right-of-way. The estimated sight distance from the existing driveway entrance is more than 600 feet to the northwest and 750 feet to the southeast. The posted speed limit is 25 MPH.

6. The General Plan's 2000-2020 Policies Map designates the Property as "Residential Area and Redevelopment Corridor." Amberton Drive is depicted as a Local Road on the Plan's Transportation Map.

7. The Petitioner proposes to relocate 18 parking spaces opposite the existing loading area 20 feet into the 30-foot public road setback and to extend the existing retaining wall along the southwest and southern edges of the relocated parking spaces.

8. Dudley Obrecht testified the Petitioner desired to relocate the 18 parking spaces 20 feet into the side setback because the trucks have difficulty accessing the loading area. He also stated that the Property's southwestern section has a 50 percent slope.

CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.B.2.a of the Regulations. That section provides that a variance may be granted only if all of the following determinations are made:

(1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.

(2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

(3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

(4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

Based upon the foregoing Findings of Fact, and for the reasons stated below, I find the requested variance complies with Section 130.B.2.a(1) through (4), and therefore may be granted.

1. The first criterion for a variance is that there must be some unique physical condition of the property, e.g., irregularity of shape, narrowness, shallowness, or peculiar topography that results in a practical difficulty in complying with the particular bulk zoning regulation. Section 130.B.2(a)(1). This test involves a two-step process. First, there must be a finding that the

property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. See *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). A "practical difficulty" is shown when the strict letter of the zoning regulation would "unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome." *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 322 A.2d 220 (1974).

In this case, the Property's irregular shape and the 50 percent slope on the Property's western and southwestern edges are exceptional relative to neighboring M-2 properties. I therefore conclude the Property's unique shape and topography cause the Petitioner practical difficulties in complying with the 30-foot structure setback requirement, in accordance with Section 130.B.2.a(1).

2. The encroaching parking spaces would be situated about 10 feet from the south lot line, but they would not be visible from either MD 100 or the developed area of the adjoining properties, which are buffered by existing vegetation and grade changes. The granting of the variance will not alter the essential character of the neighborhood or district in which the Property is located, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare, in accordance with Section 130.B.2.a(2).

3. The practical difficulty in complying strictly with the setback regulation arises from the Property's shape and physical location and was not created by the Petitioner, in accordance with Section 130.B.2.a(3).

4. The requested variance applies only to a small section of the parking lot that interferes with truck circulation. Within the intent and purpose of the regulations, then, the variance is the minimum variance necessary to afford relief, in accordance with Section 130.B.2.a(4).

ORDER

Based upon the foregoing, it is this 17th day of March 2008, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Dudley Obrecht, T/A Amberton Obrecht Properties, LLC for a variance to reduce the 30-foot parking use setback from an external street public-right-of-way in an M-2 (Manufacturing: Heavy) Zoning District to 10 feet is hereby **GRANTED**;

Provided, however, that the variance will apply only to the 18 parking spaces being requested and not to any new structures, uses, or change in uses on the subject property or to any additions thereto.

HOWARD COUNTY BOARD OF APPEALS

HEARING EXAMINER

MICHELE L. LEFAIVRE
Michele L. LeFaivre

Date Mailed: 3/19/08

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.